THE HON'BLE THE ACTING CHIEF JUSTICE SRI BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.Nos.615 of 2002, 931 of 2002, 1535 of 2002, 21867 of 2004, 21909 of 2006, 14802 of 2006, 16029 of 2006, 16030 of 2006, 21525 of 2006, 21557 of 2006, 21806 of 2006, 21807 of 2006, 21859 of 2006, 21906 of 2006, 21911 of 2006, 22618 of 2006, 24398 of 2006, 24399 of 2006, 26568 of 2006, 26569 of 2006, 26570 of 2006, 26571 of 2006, 5484 of 2007, 3000 of 2007 and 13533 of 2007

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ORDER:

(Per the Hon'ble Sri Justice Nooty Ramamohana Rao)

Constitutional validity of Sections 3 and 4 of the A.P. Tax on Entry of Goods into the Local Area Act of 2001, together with the notifications issued thereunder, has been questioned in this batch of cases.

The State of Andhra Pradesh enacted the A.P. Tax on Entry of Goods into the Local Area Act of 2001; Act No.39 of 2001 (henceforth referred to as 'the Entry Tax Act' for brevity). Section 3 of the Entry Tax Act is the charging provision, which enabled the levy and collection of tax on the entry on notified goods into any local area for sale, consumption or use therein. This levy of entry tax is characterized as unconstitutional principally for the reason that it is discriminatory and it also impedes and restricts the free movement of trade and commerce, guaranteed across the Federal Polity under Article 301 of our Constitution and for that reason

also it is bad. It is further contended that the Presidential consent, which is so essentially to be obtained prior to the introduction of the Bill, needed in terms of Clause (b) of Article 304 of our Constitution having not been obtained, the impugned Entry Tax Act which seeks to impose restrictions on the freedom of trade and commerce, should be declared as invalid.

Before we further elaborate the contentions canvassed on both sides, it will be relevant to notice the salient features of the Entry Tax Act.

Prior to enacting the present Entry Tax Act, the Governor of Andhra Pradesh has promulgated the A.P. Tax on Entry of Goods into the Local Area Ordinance 2001; Ordinance No.1 of 2001. Present Entry Tax Act replaces the said Ordinance No.1 of 2001. The statement of objects and reasons set out in the Bill indicate that in order to protect the interests and revenues of the State as some of the neighbouring States are found indulging in trade diversion by reducing the rates of taxes for certain goods than those levied in the State of Andhra Pradesh for such goods.

Various expressions found in the Entry Tax Act are defined in Section 2. The expressions “entry of goods into a local area” and “importer” are defined in sub-sections (e) and (h) of Section 2 in the following manner :

> Section 2(e) – “Entry of goods into a local area” with all its grammatical variations and cognate

expressions, means entry of notified goods into a local area from any place outside the State for consumption, use or sale therein;

Section 2(h) – "Importer" means a person who brings or causes to any notified goods whether on his own account or on account of a principal or any other person, into a local area, from any place outside the State for consumption, use or sale therein or who owns the notified goods at the time of entry into the local area from any place outside the State.

The charging provision Section 3 reads as under :

"Section 3 – Levy and collection of tax"- (1)(a) There shall be levied and collected a tax on the "entry of the notified goods into any local area" for sale, consumption or use therein. The goods and the rates at which, the same shall be subjected to tax shall be notified by the Government the tax shall be on the value of the goods as defined in clause (n) of sub section (1) of Section 2 and different rates may be prescribed for different goods or different classes of goods or different categories of persons in the local area;

(b) the tax shall be payable by the importer in such manner and within such time as may be prescribed;

(c) the rate of tax to be notified by the Government in respect of any commodity shall not exceed the rate specified for that commodity under the Andhra Pradesh Value Added Tax Act, 2005 or the notifications issued thereunder :

Provided that the tax payable by the

importer under this Act shall be reduced by the amount of tax paid, if any under the law relating to General Sales Tax in force in Union Territory or State in which the goods are purchased.

(2) Notwithstanding anything contained in sub-section (1), no tax shall be levied on the notified goods imported by a dealer registered under the Andhra Pradesh Value Added Tax Act, 2005 who brings such goods into any local area for the purpose of resale in the State of Andhra Pradesh or during the course of inter-state trade or commerce;

Provided that if any such dealer, after importing the notified goods for the purpose of resale, consumes such goods in any form or deals with such goods in any other manner except reselling the same, he shall forthwith notify the assessing authority by the 20th of the month, succeeding the month in which such goods are so consumed or dealt with and pay the tax, which would have been otherwise leviable under sub-section (1), along with interest for the period of delay at the rate of 19% per annum compounded quarterly.

(3) If any dealer having imported the notified goods for the ostensible purpose of resale deals with such goods in any other manner or consumes the same and does not notify to the assessing authority as provided in sub-section (2) or does not pay the tax as required in sub-section (2) within the specified period, the assessing authority shall assess the amount of tax which such dealer is liable to pay and levy penalty equal to

> the amount of tax due, apart from collecting interest from the date of entry of goods into the local area."0

A perusal of these provisions makes it clear that the levy and collection of tax on entry of notified goods into a local area from any place outside the State for consumption, use or sale therein has been authorized. Entry of the notified goods from one local area to another local area within the State is not subject to the levy. In other words, intra-state movement of notified goods is not subjected to the tax. Therefore, learned counsel for the petitioners, urge that that such of those importers who secure movement of the notified goods into a local area situate within the State of Andhra Pradesh from a place outside the limits of Andhra Pradesh are discriminated against while leaving out from the tax net of the notified goods brought into the limits of a local area from yet another local area within the State. Learned counsel for the petitioners have illustratively highlighted their contention by pointing out that if the notified goods are brought into the local area of Hyderabad from the local area at Visakhapatnam, they are not subjected to entry tax as both these local areas are situate within the limits of Andhra Pradesh whereas if the notified goods manufactured at Bombay are brought into the local area limits of Hyderabad, such notified goods are subjected to the entry tax. Therefore, according to the learned counsel, it is plain discrimination shown by preferring

such local manufacturers within the State of Andhra Pradesh and the manufacturers situated outside the State of Andhra Pradesh are thus discriminated. Since imposition of any tax implies in itself a certain degree of impediment on the freedom of trade, commerce and intercourse guaranteed through the federal polity under Article 301 and hence for this violation of the guarantee under Article 301 also, according to the learned counsel the impugned levy of entry tax is unconstitutional. Since the impost is an unreasonable restriction on the freedom of trade and commerce, the same is not liable to be brought on to the Statute book without obtaining the previous sanction of the President as required under clause (b) of Article 304. Since no such sanction was obtained, the Act is liable to be declared unconstitutional.

In opposition, the learned Special Government Pleader for Commercial Taxes, has pointed out that the present Entry Tax Act was enacted by the State Legislature under Entry 52, List II of the VII Schedule to our Constitution and hence the State Legislature had the competence for enacting the present piece of legislation. The learned Special Government Pleader would urge that the Entry Tax sought to be levied is compensatory in nature and not regulatory and hence stands outside the purview of Article 301. When once it stands outside the purview of Article 301, the operation of Article 304 of the Constitution is not attracted at all and hence there is no need to obtain the previous sanction of

the President. Hence, no prior sanction of the President has, in fact, been obtained. Further the learned Government Pleader sought to justify the levy on the ground that the sum total of the sales tax suffered by the notified goods in the States of their manufacture/origin and the entry tax sought to be imposed, being equal to the levy of sales tax imposed on such goods in the State of Andhra Pradesh. Hence, far from preferring the local dealer or discriminating the importer, the present Entry Tax Act is seeking to create a level playing field amongst both types of dealers.

It is, therefore, required of us to determine at the very outset as to whether the present levy is compensatory in nature or not, before necessarily examining the other questions.

In **ATIABARI TEA COMPANY LIMITED v. STATE OF ASSAM**[1], while considering the constitutional validity of the Assam Taxation of (Goods carried on Roads and Inland Waterways) Act, 1954, which provided for levy of tax on certain goods carried by road or inland waterways, the Supreme Court has pointed out that if any direct restrictions on the very movement of goods is attempted at, then, such a provision attracts Article 301 of the Constitution and its validity can be sustained only if it satisfies the requirements of either Article 302 or Article 304 contained in Part-XIII of the Constitution. The Supreme Court went on to clarify that the restrictions must be such

that they will directly and immediately restrict or impede the free flow or movement of trade for them to have the protection of Article 301. It was also held that Article 301 had also built implicitly an injunction against the State. Therefore, levy of taxes were considered as capable of impeding such free flow or movement of trade.

When the State of Rajasthan wanted to subject the motor vehicles used in any public places or kept for such use thereat to tax, the question of competence of the State Legislature to enact such a taxing law had fallen for consideration before the Supreme Court in **AUTOMOBILE TRANSPORT (RAJASTHAN) LIMITED v. STATE OF RAJASTHAN AND OTHERS**[2]. The jurisprudential concept of compensatory taxation was propounded in the abovementioned case. Taxes, which would otherwise interfere with the freedom of their free movement guaranteed under Article 301 were sought to be protected, if they are shown to be compensatory taxes. For determining what constitutes a compensatory tax, the necessary test was also evolved in **AUTOMOBILE TRANSPORT (RAJASTHAN) LIMITED cited (2 supra)**. It is pointed out that if the trade people are provided the use of certain facilities for enabling them to conduct their business better and if they are not paying much more than what is required to be paid for securing such facilities, the tax then could broadly meet the standard of compensatory tax. Thus, the jurisprudential

march from **ATIABARI TEA COMPANY CASE cited (1 supra)**, had started and a new tool for saving certain kinds of taxes from the onslaught from violation of Article 301 has been laid. Once again the whole gamut was traversed by a Constitution Bench of the Supreme Court in **JINDAL STAINLESS AND ANOTHER v. STATE OF HARYANA AND OTHERS**[3]. After noticing the jurisprudential principles evolved till then, their Lordships have reiterated that the doctrine of "direct and immediate effect of the impugned levy of tax on trade and commerce" propounded in **ATIABARI TEA COMPANY CASE cited (1 supra)** is a correct principle to assess the validity of Tax versus the protection available under Article 301. Their Lordships have also further held that the working test for determining the compensatory taxes propounded in **AUTOMOBILE TRANSPORT (RAJASTHAN) LIMITED cited (2 supra)** was also the correct principle and hence reaffirmed. It will be important, therefore, to notice how Jindal Stainless Steel had unfolded the scope and width of Articles 301, 302, 303 and 304.

Difference between exercise of Taxing and Regulatory Power

38. In the generic sense, tax, toll, subsidies, etc. are manifestations of the exercise of the taxing power. The primary purpose of a taxing statute is the collection of revenue. On the other hand, regulation extends to administrative acts which produces regulative effects on trade and commerce. The difficulty arises because taxation is also used as a measure of regulation. There is a working test to decide whether the law impugned is the result of the exercise of regulatory power or whether it is the product of the exercise of the taxing power. If the impugned law seeks to control the conditions under which an activity like trade is to take place then such law is regulatory.

Payment for regulation is different from payment for revenue. If the impugned taxing or non-taxing law chooses an activity, say, movement of trade and commerce as the criterion of its operation and if the effect of the operation of such a law is to impede the activity, then the law is a restriction under Article 301. However, if the law enacted is to enforce discipline or conduct under which the trade has to perform or if the payment is for regulation of conditions or incidents of trade or manufacture then the levy is regulatory. This is the way of reconciling the concept of compensatory tax with the scheme of Articles 301, 302 and 304. For example, for installation of pipeline carrying gas from Gujarat to Rajasthan, which passes through M.P., a fee charged to provide security to the pipeline will come in the category of manifestation of regulatory power. However, a tax levied on sale or purchase of gas which flows from that very pipe is a manifestation of exercise of the taxing power. This example indicates the difference between taxing and regulatory powers (see *Essays in Taxation* by Seligman).

Difference between "a tax", "a fee" and "a Compensatory Tax"
Parameters of Compensatory Tax

39. As stated above, in order to lay down the parameters of a compensatory tax, we must know the concept of taxing power.

40. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital, etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.

41. On the other hand, a fee is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable.

42. A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services, which costs in turn

become the basis of reimbursement/ recompense for the provider of the services/facilities. Compensatory tax is based on the principle of "pay for the value". It is a sub-class of "a fee". From the point of view of the Government, a compensatory tax is a charge for offering trading facilities. It adds to the value of trade and commerce which does not happen in the case of a tax as such. A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability). Taxes may be progressive rather than proportional. Compensatory taxes, like fees, are always proportional to benefits. They are based on the principle of equivalence. However, a compensatory tax is levied on an individual as a member of a class, whereas a fee is levied on an individual as such. If one keeps in mind the "principle of ability" *vis- i s* the "principle of equivalence", then the difference between a tax on one hand and a fee or a compensatory tax on the other hand can be easily spelt out. Ability or capacity to pay is measurable by property or rental value. Local rates are often charged according to the ability to pay. Reimbursement or recompense are the closest equivalence to the cost incurred by the provider of the services/facilities. The theory of compensatory tax is that it rests upon the principle that if the Government by some po sitive action confers upon individual(s), a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it. The basic difference between a tax on one hand and a fee/ compensatory tax on the other hand is that the former is based on the concept of burden whereas compensatory tax/fee is based on the concept of recompense/reimbursement. For a tax to be compensatory, there must be some link between the quantum of tax and the facility/services. Every benefit is measured in terms of cost which has to be reimubursed by compensatory tax or in the form of compensatory tax. In other words, compensatory tax is a recompense/reimbursement.

43. In the context of Article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse. It may incidentally bring in net revenue to the Government but that circumstance is not an essential ingredient of compensatory tax.

44. In the context of Article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse. It may incidentally bring in net revenue to the Government but that circumstance is not an essential ingredient of compensatory tax.

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46. To sum up, the basis of every levy is the controlling factor. In the case of "a tax", the levy is a part of common burden based on the

principle of ability or capacity to pay. In the case of "a fee", the basis is the special benefit to the payer (individual as such) based on the principle of equivalence. When the tax is imposed as a part of regulation or as a part of regulatory measure, its basis shifts from the concept of "burden" to the concept of measurable/quantifiable benefit and then it becomes "a compensatory tax" and its payment is then not for revenue but as reimbursement/recompense to the service/facility provider. It is then a tax on recompense. Compensatory tax is by nature hybrid but it is more closer to fees than to tax as both fees and compensatory taxes are based on the principle of equivalence and on the basis of reimbursement/recompense. If the impugned law chooses an activity like trade and commerce as the criterion of its operation and if the effect of the operation of the enactment is to impede trade and commerce then Article 301 is violated.

Burden on the State

4 7 . Applying the above tests/parameters, whenever a law is impugned as violative of Article 301 of the Constitution, the Court has to see whether the impugned enactment facially or patently indicates quantifiable data on the basis of which the compensatory tax is sought to be levied. The Act must facially indicate the benefit which is quantifiable or measurable. It must broadly indicate proportionality to the quantifiable benefit. If the provisions are ambiguous or even if the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court, that the payment of compensatory tax is a reimbursement/recompense for the quantifiable/ measurable benefit provided or to be provided to its payer(s). As soon as it is shown that the Act invades freedom of trade it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in public interest within the meaning of Article 304(*b*) [*see* para 35 (of AIR) of the decision in ***Khyerbari Tea Co. Ltd.*** **v.** ***State of Assam*** 17 **].**

Scope of Articles 301, 302 and 304 vis-a-vis Compensatory Tax

48. As stated above, taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount to restrictions on the freedom guaranteed to trade under Part XIII of the Constitution. This principle is well settled in ***Atiabari Tea Co.*** 4 It is equally important to note that in ***Atiabari Tea Co.*** 4 the Supreme Court propounded the doctrine of "direct and immediate effect". Therefore, whenever a law is challenged on the ground of violation of Article 301, the Court has not only to examine the pith and substance of the levy but in addition thereto, the Court has to see the effect and the operation of the impugned law on inter-State trade and commerce as well as intra-State trade and commerce.

49. When any legislation, whether it would be a taxation law or a non-taxation law, is challenged before the Court as violating Article 301, the first question to be asked is: what is the scope of the operation of

the law? Whether it has chosen an activity like movement of trade, commerce and intercourse throughout India, as the criterion of its operation? If yes, the next question is: what is the effect of operation of the law on the freedom guaranteed under Article 301? If the effect is to facilitate free flow of trade and commerce then it is regulation and if it is to impede or burden the activity, then the law is a restraint. After finding the law to be a restraint/ restriction one has to see whether the impugned law is enacted by Parliament or the State Legislature. Clause (*b*) of Article 304 confers a power upon the State Legislature similar to that conferred upon Parliament by Article 302 subject to the following differences:

(*a*) While the power of Parliament under Article 302 is subject to the prohibition of preference and discrimination decreed by Article 303(1) unless Parliament makes the declaration under Article 303(2), the State power contained in Article 304(*b*) is made expressly free from the prohibition contained in Article 303(1) because the opening words of Article 304 contain a non obstante clause both to Article 301 and Article 303.

(*b*) While Parliament's power to impose restrictions under Article 302 is not subject to the requirement of reasonableness, the power of the State to impose restrictions under Article 304 is subject to the condition that they are reasonable.
(*c*) An additional requisite for the exercise of the power under Article 304(*b*) by the State Legislature is that previous Presidential sanction is required for such legislation."

Ultimately, the Supreme Court had pointed out that that mere nomenclature employed either for describing the title of the enactment or the language employed in the objects and reasons set out in the bill are not the proof of the compensatory nature of the levy. The burden lies heavily on the State to demonstrate as to how the levy is intended to compensate the trade and commerce and for which purposes it is intended to subject the said levy.

It is now well settled principle that a modern Welfare State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of its larger community. It is therefore accepted that that the State carries in the process certain

primary and fundamental obligations in the form and shape of providing infrastructure so essentially needed for securing the welfare and common good of the society. No State can carry on its obligations of securing such a social welfare without collecting the revenue by way of imposition of taxes. Consequently, it has been recognized that for imposing a tax, there was no necessity for the State to demonstrate a direct or immediate corresponding service or failure or an obligation to discharge towards the taxed. Keeping that in consideration, taxes imposed for augmenting the general revenues of the State, which are in the form of sales tax are not considered as compensatory taxes. Thus, imposition of sales tax stands out completely and distinctly from compensatory taxes which it might seek to additionally impose. In the instant case, the State in its counter affidavit have taken a specific plea that the present levy is compensatory tax. It is therefore necessary as to how far the State has discharged the burden of demonstrating that the impugned levy is compensatory. This is what the State would say in their counter affidavit :-

> "15. It is submitted that the levy of Entry Tax in the present case is compensatory in nature and therefore no previous sanction of the President has been obtained. The local bodies have been taking up lot of programmes relating to laying of roads, up keeping of roads, installation of street lights, supply of

water, sanitation programmes, cleanliness schemes etc. within their local areas. They need huge funds for implementing all these schemes. There has been a resource crunch. For several reasons the local bodies especially in villages are not able to generate their own resources to meet the growing expenditure on account of provisions of various amenities and facilities. The local bodies therefore need funding by the State Government. The State Government has to provide substantial funds to these bodies to enable them to discharge their statutory obligation.

16. It is submitted that well laid up roads would help and ensure free flow of trade and commerce. Establishment of market yards, water ways and other amenities for the traders within local areas attract more trade from other States. It is only such provision of the facilities within the State that would attract more traders from other States to dispatch their goods. The infrastructure facilities within the local area are the real attraction for more flow of goods from other States. It all needs substantial allocation of funds. A Statement showing the funds allotted by the Government to the various local bodies – urban and rural – is annexed to this counter affidavit which evidences substantial allocation for providing various facilities within the local areas by the local authorities. The present levy of Entry Tax is therefore totally compensatory and regulatory in nature…."

In the annexure to the counter affidavit, the statement

showing the allocation of funds to various local bodies has been enclosed.

STATEMENT SHOWING THE FUNDS ALLOTTED BY THE GOVERNMENT TO THE VARIOUS LOCAK BODIES URBAN AND RURAL.

For the year (in crores)

S.No.	Head of allotment	2001-02	2002-03	2003-04	2004-05
	URBAN				
1.	To Municipalities for maintenance of Roads etc.	**76.00**	**130.76**	**94.49**	**80.00**
2.	To Municipal Corporations for maintenance of Roads etc.,	**61.15**	**15.89**	**35.00**	**19.65**
	RURAL				
3.	To Panchayat Raj institutions for maintenance of Rural Roads etc.,	**-----**	**------**	**78.09**	**48.11**
	Total	**137.15**	**146.65**	**207.49**	**147.76**

Statement showing the Receipts under Entry Tax Act

For the Year (in Crores)

Head of Account	2001-2002	2002-03	2003-04	2004-05
Taxes on Entry of Goods into Local Areas	5.16	20.87	40.37	61.02

The annexure has also enclosed a statement showing the receipts pursuant to the impugned levy. Obviously due to the hopeless mismatch between the levy of the Entry tax and the budgetary allocation made by the State to the local bodies, it is sought to be contended by the learned Government Pleader that the impugned levy can

be justified on the premise that it is compensatory.

We are afraid that the justification offered by the State for us to treat or accept the impugned levy as compensatory is wholly inadequate. A mere look at the statement showing the allocation of funds to the various local bodies in the various years between 2001 to 2005 will provide the answer thereto. The budgetary allocation for Municipalities for the purpose of maintenance of roads during 2001 was shown as Rs.76 Crores which went upto Rs.130.76 Crores during the next fiscal and it came down to Rs.94.49 Crores during 2003 and in 2004-05 came down further to Rs.80 Crores. Similarly, allocation of funds to the Municipal Corporations for maintenance of roads for the corresponding periods were Rs.61.15, 15.89, 35.00 and 19.65 Crores respectively, whereas for the Panchayat Raj institutions in the rural areas there was no budgetary allocation made in the years 2001-02 and 2002-03. For the next two years the allocation was Rs.78.09 and 48.11 Crores. This statement, obviously, is indicative of the priority choice accorded for the said subjects by the State in it's annual exercise of planning and allocation of funds. It has no bearing or relationship with the impugned levy of the Entry Tax. Clearly, the impugned levy is sought for making necessary addition to the State's overall revenue.

For one to justify, a particular tax levied to be compensatory in nature, it is essential that there should be direct and intricate relationship between the collection

of tax and it's intended expenditure. The broad and generalized statements mentioned by the State Government, as were noticed supra by us, are all representing or corresponding to the basic and fundamental obligations of any Government, which they owe to their citizens. They are not special features specific to cater to the needs of the people indulging in trade or commerce. Construction of roads, culverts and bridges or providing basic health care facilities or rest-houses for the transport operators on the waysides are not exclusively intended or meant for promoting any class, or even generally, the trade or commerce. Such basic and essential infrastructural facilities are also liable to be put to use by all others as well. In that respect, provision of such facilities like good motorable roads, illumination of streets or provision of parks or gardens cannot be rolled up and presented as the "specific end objectives" of the intended promotion of the interests of tradesmen or businessmen. The essential link between the infrastructure or facility or service, which is directly or even indirectly held to promote the cause of trade or commerce, is missing in them. Hence, we find ourselves not in a position to accord approval for the present impost as a compensatory tax.

Therefore, clearly the impugned law amounts to impeding the freedom of movement of trade or commerce across the territory of the Nation. The principles enunciated by the Supreme Court in

ATIABARI TEA COMPANY CASE cited (1 supra), SHREE MAHAVIR OIL MILLS AND ANOTHER v. STATE OF JAMMU AND KASHMIR AND OTHERS[4], AUTOMOBILE TRANSPORT (RAJASTHAN) LIMITED cited (2 supra) and JINDAL STAINLESS CASE cited (3 supra), have all been followed in the breach. Further, it is admitted that the procedure prescribed to obtain the sanction of the President has not been obtained prior to enacting the impugned Entry Tax Act.

Therefore, we have no hesitation to declare the impugned levy as unconstitutional.

For the foregoing discussion, the batch of writ petitions stands allowed, but, in the circumstances, without costs.

Bilal Nazki, ACJ

Nooty Ramamohana Rao, J

31st December 2007
knk/mrk

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[1] AIR 1961 SC 232
[2] AIR 1962 SC 1406
[3] 2006 (7) SCC 241
[4] 1997 (104) STC 148